Re Undoh bin Asai

HIGH COURT (KOTA KINABALU) — BANKRUPTCY PETITION K29(P)-96-94
TEE AH SING JC
21 JUNE 1995

Bankruptcy *— Notice — Validity of — Interest on judgment sum stated in bankruptcy notice not quantified up to date of the notice — Bankruptcy Act 1967 s 3(1)(i)*

This was a petition of bankruptcy by the judgment creditor. The bankruptcy notice stated that the judgment debtor had to pay the principal sum together with interest accruing thereon at a certain rate from 26 October 1993 to the date of full payment claimed by the judgment creditor. The notice itself was dated 2 November 1993. The Official Assignee at the hearing of the bankruptcy petition pointed out that the interest on the judgment sum had not been quantified up to the date of issue of the bankruptcy notice as required by s 3(1)(i) of the Bankruptcy Act 1967 ('the Act'). The petitioning creditor argued that the notice was not defective as the amount claimed was only short of eight days interest which was not very substantial that would mislead the judgment debtor or cause prejudice to him.

Held, striking out the petition:

(1) The words contained in s 3(1)(i) 'with interest quantified up to the date of the issue of the bankruptcy notice', which were added by the Bankruptcy (Amendment) Act 1992, were so plain and unambiguous that effect must be given to it.

(2) The intention of Parliament was that by the amendment a petitioning creditor was required to specify in the bankruptcy notice the amount of interest up to the date of issue of the bankruptcy notice; the rule of strict construction should be applied to the legislative words creating the act of bankruptcy.

(3) Since the interest claimed was not quantified up to the date of the issue of the bankruptcy notice and applying the rule of strict construction, the notice did not fall within the ambit of s 3(1)(i) of the Act.

(4) Non-compliance with statutory provision that interest on the judgment debt must be quantified up to the date of the issue of the bankruptcy notice was not a formal defect or irregularity remediable under s 131 of the Act. The bankruptcy notice was a nullity ab initio.

A **[Bahasa Malaysia summary**

Ini adalah satu petisyen untuk kebankrapan oleh pemiutang penghakiman. Notis kebankrapan itu menyatakan bahawa penghutang penghakiman mesti membayar jumlah prisipal bersama dengan bunga yang terakru di atasnya pada suatu kadar yang B tertentu dari 26 Oktober 1993 hingga tarikh bayaran penuh yang dituntut oleh pemiutang penghakiman. Notis itu bertarikh 2 November 1993. Pada pembicaraan petisyen kebankrapan itu Pegawai Pemegang Harta menyatakan bahawa bunga atas jumlah penghakiman tidak ditentukan hingga tarikh pengisuan notis kebankrapan seperti yang diperlukan oleh s 3(1)(i) Akta C Kebankrapan 1967 ('Akta itu'). Pemiutang yang mempetisyen berhujah bahawa notis itu tidak cacat kerana jumlah yang dituntut cuma kekurangan sebanyak bunga untuk lapan hari yang tidak begitu banyak sehingga boleh mengelirukan penghutang penghakiman atau mendatangkan prejudis kepadanya.

D

Diputuskan, membatalkan petisyen itu:

(1) Perkataan-perkataan yang terkandung di dalam s 3(1)(i), iaitu 'with interest quantified up to the date of the issue of the bankruptcy notice', yang telah ditambahkan oleh Akta Kebankrpan (Pindaan) 1992, adalah begitu jelas dan tidak E kabur dan kesan mesti diberikan kepadanya.

(2) Niat Parlimen adalah melalui pindaan itu seorang pemiutang yang mempetisyen diperlukan menyatakan di dalam notis kebankrapan itu jumlah bunga hingga tarikh pengisuan notis kebankrapan; kaedah pentafsiran ketat patut dipakai kepada F perkataan-perkataan perundangan yang membentuk tindakan kebankrapan itu.

(3) Oleh kerana bunga yang dituntut tidak dijumlahkan sehingga tarikh pengisuan notis kebankrapan itu dan memakai kaedah pentafsiran ketat, notis itu tidak termasuk ke dalam lingkungan G s 3(1)(i) Akta itu.

(4) Ketidakpatuhan peruntukan statutori bahawa bunga atas hutang penghakiman mesti dijumlah hingga tarikh pengisuan notis kebankrapan bukanlah satu kecacatan formal atau salah aturan yang boleh dibaiki di bawah s 131 Akta itu. Notis H kebankrapan itu adalah terbatal dari mula lagi.]

Notes

For cases on validity of bankruptcy notice, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) paras 1429–1443; [1994] *Mallal's* I *Digest* 134–137; [1995] *Mallal's Digest* 63–64.

Cases referred to

Lim Boon Peng v United Orient Leasing Co Bhd [1991] 1 MLJ 292 (distd)

Low Mun v Chung Khiaw Bank Ltd [1988] 1 MLJ 263 (folld)

Quebec Railway, Light, Heat & Power Co Ltd v Vandry [1920] AC 662 (folld)

Chong Kong Ping for the petitioning creditor.
Shamsulzaman for the Official Assignee.
Judgment debtor absent.

Cur Adv Vult

Tee Ah Sing JC: On the hearing of this bankruptcy petition the representative of the Official Assignee pointed out to the court that the interest on the judgment sum has not been quantified up to the date of issue of the bankruptcy notice as required by s 3(1)(i) of the Bankruptcy Act 1967 ('the Act').

The material portion of the body of bankruptcy notice is as follows:

> Take notice that within seven (7) days after service of this notice on you, excluding the day of such service you must pay to Kewangan Bumiputra Bhd (now known as BBMB Kewangan Bhd) the sum of RM10,186.33 as at 24 October 1993 together with interest accruing thereon at the rate of 10% pa from 26 October 1993 to the date of full payment claimed by them as being the amount due on a final judgment obtained by them against you in the magistrate's court at Kota Kinabalu dated 13 January 1988 whereon execution has not been stayed, ...

And the relevant part of the particulars of amount claimed is as follows:

> Add: Statutory interest on the balance sum of RM5,069 at 10% pa from 23 April 1993 to 25 October 1993 (186 days) RM258.31
>
> RM10,186.33

The request for issue of the bankruptcy notice was filed on 2 November 1993. And the bankruptcy notice that was issued was dated 2 November 1993. It is clear that the claim for interest was quantified up to 25 October 1993 not up to 2 November 1993 the date of issue of the bankruptcy notice.

Learned counsel for the petitioning creditor submitted that the bankruptcy notice is not defective. The amount claimed is only short of eight days interest which is about RM11.11. This amount is not very substantial which would mislead the judgment debtor or cause prejudice to him. The amount demanded has been quantified and was unequivocal. In support he cited the case of *Lim Boon Peng v United Orient Leasing Co Bhd* [1991] 1 MLJ 292 where the Supreme Court in a judgment delivered by Mohamed Azmi SCJ at p 293 said:

> Where the date of issue of the notice by the registrar is the same as the date named in the notice by the creditor, which is the case here, then the

A maximum amount of interest accruing due that the judgment creditor could possibly quantify in the body of the bankruptcy notice was obviously the amount owing as at the date of issue of the notice. This is envisaged by this court in *Ghazali bin Mat Noor v Southern Bank Bhd & Ors* [1989] 1 MLJ 142 at p 143. In our opinion, where it would be possible to quantify the interest due up to the date of the issue of the bankruptcy B notice, the solicitors for the judgment creditor in the preparation of the notice, could claim for their clients the quantified maximum sum in advance. However, if they elected for some reason to claim for a lesser sum, or where it is not possible to quantify the maximum sum, it could not by itself render the bankruptcy notice bad in law for the simple reason that it could not possibly affect the correctness of the sum actually C owing as at the date of issue of the bankruptcy notice. As far as interest on judgment debt is concerned, the correct sum owing as at the date of issue of the bankruptcy notice (which in the present case was the same as the date named in the notice) could therefore either be the maximum quantified sum or any lesser sum that existed at an earlier date as a judgment debt and available for bankruptcy purposes.

D In the circumstances, the bankruptcy notice in this case was not bad in law merely because the quantified sum demanded in the body of the notice was as at 31 March 1988 and not as the date of issue of the notice, on 8 June 1988.

The learned counsel for the petitioning creditor submitted that the E court should exercise its discretion under s 131 of the Act.

I shall now deal with s 3(1)(i) of the Act, the relevant part of which reads as follows:

> If a creditor has obtained a final judgment or final order against him or any amount and execution thereon not having been stayed has served on F him in Malaysia, or by leave of the court elsewhere, a bankruptcy notice under this Act requiring him to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order *with interest quantified up to the date of the issue of the bankruptcy notice* ... (Emphasis is mine.)

The words 'with interest quantified up to the date of the issue of the G bankruptcy notice' were added by the Bankruptcy (Amendment) Act 1992 (Act A827). Act A827 came into force with effect from 17 July 1992.

It is to be noted that the case of *Lim Boon Peng v United Orient Leasing Co Bhd* [1991] 1 MLJ 292 was decided by the Supreme Court H on 23 November 1990 before the amendment to s 3(1)(i) of the Act was made. Therefore this case cannot be applied to the instant case.

I am of the view that the words 'with interest quantified up to the date of the issue of the bankruptcy notice' in s 3(1)(i) of the Act are so plain and unambiguous. Parliament in its wisdom has enacted that the I interest claimed must be calculated up to the date of the bankruptcy notice. Effect must be given to it.

In *Quebec Railway, Light, Heat and Power Co Ltd v Vandry* [1920] AC 662 Lord Sumner in delivering the judgment of the Judicial Committee said (at p 676):

> Secondly, there is no reason why the usual rule should not apply to this as to other statutes, namely, that effect must be given, if possible, to all the words used for the legislature is deemed not to waste its words or to say anything in vain.

The intention of Parliament is that by the amendment a petitioning creditor is required to specify in the bankruptcy notice the amount of interest up to the date of issue of the bankruptcy notice.

In *Low Mun v Chung Khiaw Bank Ltd* [1988] 1 MLJ 263, the Supreme Court said (at p 265): '... since bankruptcy is entirely a creation of statute law, the rule of strict construction should be applied to the legislative words creating the act of bankruptcy ... .'

Since the interest claimed was not quantified up to the date of the issue of the bankruptcy notice and applying the rule of strict construction, I am of the view that the notice does not fall within the ambit of s 3(1)(i) of the Act.

I am of the view that non compliance with the statutory provision that interest on the judgment debt must be quantified up to the date of the issue of the bankruptcy notice is not a formal defect or irregularity remediable under s 131 of the Act.

I am of the view that failure to quantify the amount of interest up to the date of the issue of the bankruptcy notice renders the bankruptcy notice a nullity ab initio.

Even though the debtor in this case has not challenged the validity of the bankruptcy notice, I am of the view that in the face of errors of law on the record before the court, the court can make the necessary order as the court deems fit in order to do justice to the case.

In the circumstances and for the reasons set out by me, I have no hesitation in striking out the creditor's petition and accordingly do so with no order as to costs.

Petition struck out.

Reported by Rebecca MK Lee